

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In The Matter of</b>	)	
	)	
<b>Further Inquiry Into Tribal Issues</b>	)	<b>WC Docket No. 10-208</b>
<b>Relating to the Establishment</b>	)	
<b>Of a Mobility Fund</b>	)	

**COMMENTS OF TWIN HOUSES CONSULTING, LLC**

Twin Houses Consulting, LLC (“THC”) submits these comments in response to request from the Federal Communications Commission (“Commission”) in the above captioned docket.<sup>1</sup> THC provides management and other consulting services to companies doing business on tribal lands, including wireless companies and tribally-owned communications companies. THC’s clients have a direct interest in the outcome of this docket and are appreciative of the Commission’s efforts to promote advanced wireless services in Indian Country.

**I. The Overarching Factor Should Be Government-to-Government Consultation.**

As asserted throughout the Public Notice, the Commission is aware of its role in the “unique government-to-government trust relationship with American Indian Tribes and Alaska Native Villages.”<sup>2</sup> Key to this relationship is consultation between tribal and the federal governments. Consultation between sovereign powers is essential to achievement of the laudable goal of advancing wireless services on tribal lands. Therefore, every prong of Universal Service Fund (“USF”) policy targeted to tribal lands should recognize and make explicit the consultative process.

One manner of assuring this would be to require all bidders to consult with the affected tribal governments throughout the process. When short-forms, the first step in the auction process, are

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<sup>1</sup> *Further Inquiry Into Tribal Issues Relating to Establishment of a Mobility Fund*, WT Docket 10-208, Public Notice 11-702. (Apr. 11, 2011) (“Public Notice”).

<sup>2</sup> Public Notice, para.2 (footnote omitted).

submitted to the Commission, any bidder seeking support for tribal lands should demonstrate that it has actively engaged the tribal government in a discussion of how the possible service will affect the service area. The short-form should include a copy of a memo from the bidder to the tribal government that delineates specific topics. THC supports the topics put forth in the Public Notice,<sup>3</sup> but urges a prioritization that recognizes the sovereign power of the tribal government. Specifically, the memo should highlight how the bidder will comply with tribal licensing and regulatory procedures, as well as explicit knowledge of the tribe's right-of-way procedures.

The memo should also include a map of the service area showing the planned coverage, including signal strength. The map should clearly illustrate the tribal land boundaries and any internal boundaries that may affect provisioning of services. For example, local communities such as chapter house areas or wireless license boundaries should be denoted.

Winning bidders should expand on the memo within the long-form stage, updating with additional information including when the services will be provided to the tribal lands. Contact information for the person(s) responsible for the project should be included.

In addition to proposed requirements for companies seeking USF support, the Commission should impose a consultation requirement on itself throughout the auction process. When the short-form and long-form applications are received, the Commission should directly contact the affected tribe(s) to ensure that the tribal government has been properly informed and included in the planning process. Any compliance filing contemplated by the Commission under the Mobility Fund (for example, quarterly or annual reports as to use of USF support) should also be filed with the tribal government. These compliance filings should update contact information for the successful bidder.

The Commission should specifically delineate the process by which a tribal government can request a government-to-government consultation regarding Mobility Fund issues. As the Public Notice notes, the Commission has a unique duty to ensure that tribal governments are treated as sovereign entities. Therefore, any government-to-government consultation should be within the

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<sup>3</sup> Public Notice, para. 6.

parameters of government relations. The Commission should not rely on its traditional means such as the public comment process nor require winning bidders to act as the Commission's surrogate. Rather, a distinct course should be designated by which a tribal government may consult with the Commission. The process should include the Commission's Office of Native Affairs and Policy.

## **II. Both Proposed Mechanisms Are Sound and Should Be Approved.**

THC supports both mechanisms stated in the Public Notice: Priority units for tribal land areas<sup>4</sup> and the bidding preference for tribally-owned entities.<sup>5</sup> Both of these mechanisms will aid the provisioning of wireless services in Indian Country.

Giving tribal governments authority over the priority units straightforwardly recognizes their sovereign right to provision communication services on their lands. It also ensures that the **tribe's** priorities will be considered in the distribution of, as the Public Notice states, limited USF funds. THC proposes that the Commission give only recommendations as to how a tribal government employs these priority units. Tribes will have different priorities regarding their lands. As the Public Notice observes, some may wish to support an anchor institution, some may use the mechanism to encourage economic development and others may want to protect a culturally-sensitive area. Regardless of the priorities, it is the tribe and **only** the tribe that bests understands its land and the needs of its people. No other entity can make this determination nor should limitations be placed on it. While the Commission can assist tribes by making suggestions based on its experience, it should not restrict the employment of the priority units. To do so would inhibit tribal sovereign rights.

Just as the priority units recognizes a tribe's sovereign right to provide communication service, so too will the use of a bidding preference for tribally-owned entities. It also has the potential of greatly increasing access to wireless services on tribal lands. The eight tribally-owned incumbent providers in the country supply a wealth of examples of how owning and controlling communication services positively drives penetration rates, as well as vastly aiding economic

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<sup>4</sup> Public Notice, paras. 3-5.

<sup>5</sup> Public Notice, para. 7.

development. One stunning illustration of how tribal control and ownership can increase true universal service is Mescalero Apache Telecom, Inc. (“MATI”). In 1990, the Mescalero Apache reservation, located in a remote area of southeast New Mexico, had a wireline telephone penetration rate of less than ten percent. By 2001, the Tribe had established MATI and successfully petitioned the Commission to designate the tribal lands as MATI’s serving area. Only six years later, through tribal control and focus, penetration rates had increased to ninety-eight percent.<sup>6</sup> MATI continues today providing advanced communications services to the Tribe and demonstrating how tribal control is the most effective path to bridging the communications gap in Indian Country.

The Commission has past examples of utilizing policy to target USF support to tribal areas. One excellent instance is targeting Lifeline and Link Up funds to customers living on tribal lands. Another is the use of additional bidding credits for successful bidders on wireless spectrum licenses. The additional bidding credits are meant to explicitly “encourage carriers to provide access to affordable, quality service to American Indians living on American Indian Reservations.”<sup>7</sup> Both are instructive to the instant consideration.

THC recommends that the Commission structure the Mobility Fund tribal-owned preference similar to the tribal lands bidding credit. The bidding credit is a discount applied to the gross bid. The discount is calculated according to a set formula based on the amount of square kilometers of tribal lands and the gross bid.<sup>8</sup>

Using these examples, the Commission can easily craft a tribal-owned preference and allow for priority units to continue recognizing the sovereign right of tribal governments to provision communication services on their lands.

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<sup>6</sup> Comments of the National Tribal Telecommunications Association, CC Docket 96-45, filed Apr. 17, 2008, pgs. 2-3. See, also, *id.*, pg 7 for a discussion of Fort Mojave Telecommunications, Inc., the tribally-owned carrier of Fort Mojave Indian Tribe of Arizona, California and Nevada.

<sup>7</sup> Tribal Lands Bidding Credits Frequently Asked Questions, Commission website, [http://wireless.fcc.gov/auctions/default.htm?job=tribal\\_bidding&page=2#N10216](http://wireless.fcc.gov/auctions/default.htm?job=tribal_bidding&page=2#N10216), (accessed May 4, 2011).

<sup>8</sup> *Ibid.*

### **III. The Commission Should Continue to Consult with Tribal Governments Throughout the Mobility Fund Process.**

Commissioner Michael Copps, in a speech before the National Congress of American Indians, stated that the Commission “has finally gotten serious about re-establishing its trust relationship with the Tribal Governments.”<sup>9</sup> THC’s clients, tribes and businesses providing services on tribal lands, welcome this statement by Commissioner Copps and believe that many of the proposals found in the Public Notice offer a good beginning. However, throughout the Mobility Fund process, the Commission should continue to consult with tribal governments in a deliberate and specific manner. By doing so, not only will the important trust relationship be strengthened, but many tribal land areas will begin to enjoy advanced communication services.

Respectfully Submitted,

[electronically filed]

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<sup>9</sup> *Remarks of Michael J. Copps to the National Congress of American Indians*, Albuquerque, New Mexico, Nov. 17, 2010.